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NOTICE OF ALLOWANCE AND FEE(S) DUE

28960 7590 03/04/2004

HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

EXAMINER

JUBA JR, JOHN

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 03/04/2004

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/930,838 | 08/15/2001 | David T. Amm | SLM-06400 | 1401 |

TITLE OF INVENTION: BLAZED GRATING LIGHT VALVE

| APPLN. TYPE | SMALL ENTITY | ISSUE FEE | PUBLICATION FEE | TOTAL FEE(S) DUE | DATE DUE |
|----------------|--------------|-----------|-----------------|------------------|------------|
| nonprovisional | NO | \$1330 | \$300 | \$1630 | 06/04/2004 |

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

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B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail

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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

28960 7590 03/04/2004

HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

| |
|--------------------|
| (Depositor's name) |
| (Signature) |
| (Date) |

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| EXAMINER | ART UNIT | CLASS-SUBCLASS |
|---------------|----------|----------------|
| JUBA JR, JOHN | 2872 | 359-572000 |

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

| | |
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| 1 | _____ |
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3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies _____

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- ☐ A check in the amount of the fee(s) is enclosed.
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- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

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| (Authorized Signature) | (Date) |
| <p>NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.</p> <p>This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.</p> <p>Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.</p> | |

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| HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086 | | | JUBA JR, JOHN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2872 | |
| DATE MAILED: 03/04/2004 | | | | |

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Application No.

09/930,838

Examiner

John Juba, Jr.

Applicant(s)

AMM ET AL.

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment of Dec. 8, 2003 and telephone interview of Feb 23, 2004.
2. ☒ The allowed claim(s) is/are 1-14, 31-34, 36 and 37.
3. ☒ The drawings filed on 08/15/2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 6/16/2003+
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


JOHN JUBA, JR.
PRIMARY EXAMINER

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Thomas B. Haverstock on February 23, 2004.

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In the Claims:

1. (Once amended) A light modulator comprising:
 - a. elongated elements arranged parallel to each other and configured in a grating plane, each elongated element comprising a reflective surface such that in operation an incident light diffracts into at least two diffraction orders; and
 - b. means for adjusting a height of selected ones of the elongated elements relative to the grating plane such that in operation the incident light diffracts into a single non-zero diffraction order different than the at least two diffraction orders.
2. The light modulator of claim 1 wherein the means for adjusting the height of the selected ones of the elongated elements comprise:
 - a. a first conductive element along at least a portion of each of the selected ones of the elongated elements; and
 - b. a substrate coupled to the elongated elements, the substrate comprising a second conductive element such that an electrical bias applied between the first conductive elements and the second conductive element adjusts the height of the selected ones of the elongated elements.
3. The light modulator of claim 2 further comprising first and second posts, the first and second posts coupling the elongated elements to the substrate.

4. The light modulator of claim 1 wherein the selected ones of the elongated elements comprise every other ones of the elongated elements.
5. The light modulator of claim 1 wherein the reflective surfaces of each of the elongated elements comprise a blaze profile.
6. The light modulator of claim 5 wherein the blaze profile comprises at least two planar surfaces.
7. The light modulator of claim 6 wherein the two planar surfaces comprise planes parallel to the grating plane.
8. The light modulator of claim 5 wherein the reflective surface of the blaze profile comprises a single planar surface at a blaze angle with respect to the grating plane.
9. The light modulator of claim 1 wherein two times a width of each of the elongated elements comprises a grating pitch.

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10. (Once amended) The light modulator of claim 9 wherein the at least two diffraction orders comprise a zeroth order diffraction and one of a plus or minus second order diffraction.
11. The light modulator of claim 10 wherein the single diffraction order comprises a first order diffraction.
12. (Once Amended) A light modulator comprising:
 - a. elongated elements arranged parallel to each other and configured in a grating plane, each of selected ones of the elongated elements comprising a first conductive element, each elongated element comprising a reflective surface such that in operation an incident light diffracts into at least two diffraction orders; and
 - b. a substrate coupled to the elongated elements and comprising a second conductive element such that in operation an electrical bias applied between the first conductive elements and the second conductive element adjusts a height of the selected ones of the elongated elements relative to the grating plane and further such that in operation the incident light diffracts into a single non-zero diffraction order different than the at least two diffraction orders.
13. (Once Amended) A light modulator comprising:

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- a. elongated elements arranged parallel to each other in a grating plane, each elongated element comprising a blaze profile, each blaze profile comprising a reflective surface, each of selected ones of the elongated elements comprising a first conductive element along the blaze profile, the blaze profile comprising at least two planar surfaces, the two planar surfaces comprising planes parallel to the grating plane such that in operation an incident light diffracts into at least two diffraction orders; and
 - b. a substrate coupled to the elongated elements, the substrate comprising a second conductive element such that, when an electrical bias applied between the first conductive elements and the second conductive element adjusts a height of the selected ones of the elongated elements, the incident light diffracts into a single non-zero diffraction order different than the at least two diffraction orders.
14. (Once Amended) A light modulator comprising:
- a. means for diffracting an incident light into at least two diffraction orders; and
 - b. means for adjusting the means for diffracting such that the incident light diffracts into a single non-zero diffraction order different than the at least two diffraction orders.
15. (Canceled)

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16. (Canceled)

17. (Canceled)

18. (Canceled)

19. (Canceled)

20. (Canceled)

21. (Canceled)

22. (Canceled)

23. (Canceled)

24. (Canceled)

25. (Canceled)

26. (Canceled)

27. (Canceled)

28. (Canceled)

29. (Canceled)

30. (Canceled)

31. (Thrice Amended) A light modulator comprising:

- a. elongated elements arranged parallel to each other and dynamically configurable into one of a plurality of group configurations of the elongated elements, each elongated element comprising a reflective surface such that in operation an incident light illuminating the elongated elements produces a reflected light when the elongated elements are at a

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first height, each group configuration comprises a [specific] different number of at least three elongated elements within the group configuration, and the light modulator is configured according to a single group configuration at a time; and

- b. means for adjusting a relative height of the elongated elements of each of the groupings such that in operation the incident light illuminating the elongated elements produces a single diffraction order selectable between a first diffraction angle and minus the first diffraction angle.

32. The light modulator of claim 31 wherein the means for adjusting the relative heights of the elongated elements of the groupings of the elongated elements comprises:

- a. first conductive elements along at least a portion of the elongated elements; and
- b. a substrate coupled to the elongated elements and comprising a second conductive element such that in operation the relative heights of the elongated elements of each of the groupings are adjusted by applying individual electrical biases between the first conductive elements of the grouping and the second conductive element.

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33. The light modulator of claim 32 wherein the reflective surfaces of the elongated elements comprises a metal and further wherein the metal comprises the first conductive elements.
34. The light modulator of claim 31 wherein the groupings of the elongated groupings comprise variable groupings of the elongated elements such that in operation first groupings of three of the elongated elements produce the single diffraction order at a first diffraction angle and further such that second groupings of four of the elongated elements produce the single diffraction order at a second diffraction angle.
35. (Canceled)
36. (Thrice Amended) A light modulator comprising:
- a. elongated elements arranged parallel to each other and configured into one of a plurality of group configurations of the elongated elements, each elongated element comprising a reflective surface and a first conductive element, each group configuration comprising [comprises] a different [specific] number of at least three elongated elements within the group configuration, and the light modulator is configured according to a single group configuration at a time; and
 - b. a substrate coupled to the elongated elements, the substrate comprising a second conductive element such that in operation an incident light

illuminating the elongated elements produces a reflected light when the elongated elements are at a first height and further such that in operation a relative height of the elongated elements of each grouping are adjusted to produce a single diffraction order when individually varying electrical biases are applied between the first conductive elements of each of the groupings and the second conductive element, wherein the single diffraction order is selectable between a first diffraction angle and minus the first diffraction angle.

37. (Twice Amended) A light modulator comprising:
- a. means for reflecting an incident light including a number of elongated elements; and
 - b. means for adjusting the means for reflecting such that the incident light diffracts into a single diffraction order selectable between a first diffraction angle and minus the first diffraction angle, wherein the first diffraction angle is variable according to the means for adjusting by changing [reconfiguring a] the number of elongated elements within an elongated element group to form a new elongated element group configuration.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Claims 1 – 14 are allowable over the prior art for the reasons set forth with respect thereto in the last Office action (March 19, 2003). Claims 31 – 34, 36, and 37 are now allowable over the prior art since the prior art taken alone or in combination fails to teach or fairly suggest, in combination,

a plurality of elongated elements configured into a single grouping at a time such that a single diffraction order is selectable between a first diffraction angle and minus the first diffraction angle and wherein individually varying electrical biases are applied between the first conductive elements of each of each of the groupings and the second conductive element, as recited in claim 36;

means for reflecting light in combination with means for adjusting the means for reflecting such that the incident light diffracts into a single diffraction order selectable between a first diffraction angle and minus the first diffraction angle particularly wherein the first diffraction angle is variable according to the means for adjusting *by changing the number of elongated elements within an elongated element group*, as now recited in claim 37, or as recited with greater structural detail in claim 31.

Applicants' amendment of claims 31 and 36 is sufficient in overcoming the rejection of claims 31 – 33 and 36 under 35 U.S.C. § 102(e) as being anticipated by Gutin, et al (U.S. Patent number 6,421,179). The examiner disagrees with Applicants' characterization of Gutin, et al as disclosing diffraction into both the +1 and –1 orders. Instead, Gutin, et al clearly disclose *dispersion* of several wavelengths *within* the first

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order to respective output means (120)(122), or dispersion of the same wavelengths within the second order to respective output means (134)(136). Nonetheless, Gutin, et al fail to disclose operation of the elongated elements to produce a single diffraction order selectable between a first diffraction angle and minus the first diffraction angle in the manner now recited in claims 31 and 36.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Information Disclosure Statement

Enclosed are an initialed copy of Applicants' form PTO-1449 of June 16, 2003, fifteen electronic I.D.S. forms dated July 15, 2003, form PTO-1449 of July 17, 2003, and electronic I.D.S. form dated December 9, 2003. Additional electronic I.D.S. submissions were filed with the Office on July 15, 2003, January 12, 2004, and February 2, 2004. Through whatever error or omission, there were no corresponding forms in the file for the examiner to initial. The references cited in these three submissions have been transcribed to examiner's form PTO-892, and the form has been labeled "Substitute PTO-1449. Applicants' submissions of February 11 and February 12, 2003 were unaccompanied by a form PTO-1449, and these citations have also been transcribed to the examiner's form.

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The Examiner has considered all of the references submitted as part of the Information Disclosure Statements (in excess of 900), but has not found any to be particularly relevant. (aside from the references substantially cumulative to references already applied). If Applicant is aware of pertinent material in the references, he should so state in a response to this Office action.

The following is an excerpt from MPEP 609:

“Although a concise explanation of the relevance of the information is not required for English language information, applicants are encouraged to provide a concise explanation of why the English-language information is being submitted and how it is understood to be relevant. Concise explanations (especially those which point out the relevant pages and lines) are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability or where a large number of documents are submitted and applicant is aware that one or more are highly relevant to patentability.”

Applicant is reminded of section 2004, paragraph 13, of the MPEP.

It is desirable to avoid the submission of long lists of documents if it can be avoided. Eliminate clearly irrelevant and marginally pertinent cumulative information. If a long list is submitted, highlight those documents that have been specifically brought to applicant's attention and/or are known to be of most significance. See *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F. Supp. 948, 175 USPQ 260 (S.D. Fla. 1972), *aff'd*, 479 F.2d 1338, 178 USPQ 577 (5th Cir. 1973), *cert. denied*, 414 U.S. 874 (1974). But cf. *Molins PLC v. Textron Inc.*, 48 F.3d 1172, 33 USPQ2d 1823 (Fed. Cir. 1995).

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Post-allowance papers should be mailed to **Box Issue Fee**. Post-allowance papers may also be faxed to correspondence branch in PUBs. The fax number is (703) 308-5083. The **PUBs customer service** number is (703) 305-8497.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Juba whose telephone number is (571) 272-2314. The examiner can normally be reached on Mon.-Fri. 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Drew Dunn can be reached on Mon.- Thu., 9 - 5.

The centralized fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for *all* communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


JOHN JUBA, JR.
PRIMARY EXAMINER
Art Unit 2872

February 23, 2004